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BY HAND DELIVERY

Mr. Bob Spangler
Acting Chief, Enforcement Division
Common Carrier Bureau
Federal Communications Commission
2025 M Street, N.W., Room 6008
Washington, D.C. 20554

Re: *Ex Parte—Implementation of the Pay Telephone Reclassification and
Compensation Provisions of the Telecommunications Act of 1996, CC Docket
No. 96-128*

Dear Mr. Spangler:

On behalf of the Personal Communications Industry Association ("PCIA"), we hereby request that the Commission issue a further public notice and seek additional comments from the parties in the above-referenced proceeding in light of the D.C. Circuit's recent clarification of its actions in *Illinois Public Telecommunications Association v. FCC* ("IPTA Clarification").¹ The Court's clarification requires that the Commission significantly broaden the scope of its inquiry

¹ No. 96-1394, slip op. (D.C. Cir. Sept. 16, 1997).

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beyond the inquiry set forth in the Commission's initial public notice² following remand by the Court.³

In its *Public Notice*, the Commission claimed that

the court actually vacated only one narrow aspect of [the *Payphone Orders*], *i.e.*, the asset valuation standard [for] transfers of telephone company payphone assets to separate affiliates. The remaining portions of the orders were either upheld, or remanded to the Commission for further consideration and explanation.⁴

The Commission went on to claim that "except for the vacated asset valuation standard, all of the requirements of the *Payphone Orders*—including those portions that were remanded to the Commission—remain in effect pending further action by the Commission on remand."⁵ The Court has now indicated that the Commission misinterpreted *IPTA*.

In its *IPTA Clarification* opinion, the Court made clear that it vacated substantial portions of the Commission's *Payphone Orders*,⁶ including the interim compensation plan:

[T]he court in this case *did intend to vacate* those portions of the *Payphone Orders* setting at \$.35 the compensation that the IXC's must pay to payphone service providers for subscriber 800 and access code calls, both prescriptively during the interim period and as the default rate thereafter. The court likewise *intended to vacate* those portions of the *Payphone Orders* requiring that, during the first phase of the interim plan, the IXC's with annual toll revenues in

² Public Notice, "Pleading Cycle Established for Comment on Remand Issues in the Payphone Proceeding," DA 97-1673 (rel. Aug. 5, 1997) ("*Public Notice*").

³ See *Illinois Public Telecommunications Ass'n v. FCC*, 117 F.3d 555 (D.C. Cir. 1997) ("*IPTA*").

⁴ *Public Notice*, at 1.

⁵ *Id.* at 1-2

⁶ *Implementation of the Pay Telephone Reclassification and Compensation Provision of the Telecommunications Act of 1996, Report and Order*, 11 FCC Rcd. 20541 (1996) ("*Payphone Report & Order*"); *Order on Reconsideration*, 11 FCC Rcd. 21233 (1996).

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excess of \$100 million pay the full amount of the compensation rightfully due from all IXCs.⁷

As a result, the Commission must reconsider the very foundations for its compensation plan. Last week's court decision confirms that the Commission's perceived need for mere "further consideration and explanation" for limited aspects of the *Payphone Orders* is legally incorrect. Instead, the Court has ordered the Commission to perform a fundamental re-examination of its compensation plan.

The Commission should therefore issue a further public notice seeking comment on—among other issues—the type, method, and rate of compensation that will best serve the Commission's objectives of achieving market pricing for payphone services and a competitive payphone industry.⁸ Such a public notice would provide the parties to this proceeding with adequate notice of and opportunity to comment on the issues under consideration by the Commission. It would also ensure that the Commission engages in reasoned decisionmaking consistent with the terms of the Court's remand.

Respectfully submitted,



Kent D. Bressie

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Personal Communications Industry Association*

Enclosures

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⁷ *IPTA Clarification*, slip op. at 3 (emphasis added).

⁸ See *Payphone Report & Order*, 11 FCC Rcd. at 20567 (concluding that "the most appropriate way to ensure that PSPs receive fair compensation for each call," and to promote PSP competition, "is to let the market set the price" for payphone calls).